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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 189.

THE CONNECTICUT LIGHT AND POWER COMPANY, *Petitioner*,

v.

THE FEDERAL POWER COMMISSION, *Respondent*.

MEMORANDUM FOR ARGUMENT TO BE MADE ON BEHALF OF THE PUBLIC UTILITIES COMMISSION OF CONNECTICUT, THE STATE OF CONNECTICUT AND THE NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS

by

JOHN E. BENTON, ADVISORY COUNSEL OF SAID ASSOCIATION.

The National Association of Railroad and Utilities Commissioners, 7409-7415 New Post Office Building, Washington, D. C.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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May it Please the Court:

I make this argument for the Connecticut Commission, the State of Connecticut and the National Association, upon our brief filed August 23, 1944, and upon the brief of Attorney General Pallotti, filed December 27, 1944.

I shall discuss only the situation as presented at Bristol, East Hampton and Torrington-Winsted, as to the Groton situation merely making reference to the discussion in our Association brief.

The Question Presented.

The question presented here is whether the principle of the *Jersey Central case* can be extended to cover this case.

That case established that an intrastate company, which makes no interstate sales is nevertheless subject to the Act if it owns facilities used in transmitting electric energy on its way from the place where generated to a distributing company in another state.

In this case, this company, through use of the facilities at the places just mentioned, makes no interstate sales, and has no part in transmitting energy from one state to another; but it does receive energy which has been so transmitted, and does transmit the same in local distribution—not for sale to other distributors, but only for its own use, in supplying its own consumer customers.

Because the *Jersey Central case* made the Act applicable to any company which, although not selling in interstate commerce, does transmit energy in its course to a distributing company in another state, it results that every interstate sale of energy at wholesale, and all transmission of energy so sold, until its receipt for local distribution, is already subject to the Act, without any further extension, to make it applicable to a case like this.

The Jersey Central decision brought under the Act many companies which make no interstate sales. The extension attempted here would bring under the Act practically all remaining intrastate companies.

The Jersey Central Decision Negatives This Attempted Extension.

Whether the majority decision in the *Jersey Central case* was or not expressive of the intent of Congress, there was logic in it, for it could be argued that, the declared purpose of Congress being to regulate interstate sales to distributing companies, the language of the Act should be construed to give the regulatory Commission jurisdiction over all

transmission from the generating plant to the distributing company, so that the Commission might reach all transmission in any way affecting the wholesale transaction, if called upon to make an order for the improvement of service to the distributing company, or to establish reasonable charges for transmission,—for, as Mr. Shea told you upon the argument in the Jersey Central case,—Congress designed to provide regulation of charges for transmission, when no sale of energy is involved as well as regulation of charges for energy sold. There was logic, I say, in so construing the Act as to enable the Commission to reach all transmission up to the delivery to the distributing company, for that would tend to insure attainment of the main purpose of the Act; but there is no logic in this proposed extension, to make the Act cover transmission after the energy has been received by the distributing company, for such extension can aid in no way towards the accomplishment of any purpose of the Act.

The Jersey Central decision not only does not support this order, but the majority opinion in that case negatives the construction of the Act made by the Court below, and also that made by the Commission, as I shall show.

How can any purpose of the Act be served by extending the Commission's jurisdiction to a local distributing company, which renders no service subject to Commission regulation?

The Broad Purpose of the Act was the Regulation of Interstate Wholesale Contracts, Not the Reformation of Accounts.

The Court below apparently felt driven to discover some purpose to be served, so it said that a construction holding facilities used solely in local distribution to be not subject to the Commission's jurisdiction would "contradict the broad purpose of the Act to correct write-ups, inflation of accounts and similar practices."

But where, in the Act, is that purpose expressed? This Court, in the *Jersey Central case*, said:

> "The primary purpose * * * was to give a federal agency power to regulate the sale of electric energy across state lines. Regulation of such sales had been denied to the States by Public Utilities Commission v. Attleboro Steam & Electric Co., 273 U. S. 83, * * *
>
> Subsections (a) and (b) show the intent to regulate such transactions as are beyond state power under the Attleboro Steam & Electric Co., Case." (319 U. S. 67-70)

That was the broad purpose which this Court saw, instead of the reformation of accounts, as the Court below assumed. Reformation of accounts was not even a purpose required by the Act to be accomplished. What, if anything, in that line was necessary, by way of correction of past write ups, and of inflated accounts was left to be determined by the Commission.

Accounts, to be kept as the Commission might direct, were a means to the end, and not *the* end for which the Act was passed. Accounts are merely one of the working tools given to the Commission to enable it to regulate interstate wholesale rates.

This Court, in the *Goodrich Transit Co. case* (224 U. S. 211), held that the Interstate Commerce Commission might prescribe accounts covering property and business wholly intrastate, and admittedly beyond the Commission's jurisdiction.

The provision in this Act, under which the Commission, for a company otherwise subject to its jurisdiction, may prescribe accounts covering facilities such as these, does not make such *facilities* subject to its jurisdiction.

All Facilities of This Company at the Places Under Discussion are Used Solely in Local Distribution.

We claim that all of the facilities of this company used at Bristol, and at the other places covered by this discussion, are facilities used "solely in local distribution". The

Court below recognized them as distribution facilities, but held that whether they were "local or otherwise" was irrelevant, because, as it held, facilities used solely in local distribution may nevertheless be subject to the jurisdiction of the Commission if used in any transmission of electric energy moving from one state into another. The court said:

> "Therefore, whether or not the *facilities by which* petitioner *distributes* energy from Massachusetts should be classified as 'local' is not relevant to this case. The sole test of jurisdiction of the Commission over accounts is whether these facilities, 'local' or otherwise, are used for the transmission of electric energy from a point in one state to a point in another."

The Court's recognition that all these facilities are distribution facilities we think unavoidable; and we think also that their local character is obviously relevant and decisively excludes them from the Act.

The only business of this company, at the places mentioned, is the distribution of electric energy to consumers, as distinguished from the business of generating and selling to other companies in interstate commerce. Plainly then, all of its facilities must be used in distribution. That they are "used in local distribution" as that phrase is used in this statute, seems equally plain.

At Bristol,—distinguishing that place at the moment from other places,—the substation consists of facilities without which the energy could not be received and distributed. From the substation, the voltage having been lowered, distribution is made immediately to consumers. Obviously these Bristol facilities are "used in local distribution" *at that very point*. They must be within the exclusion phrase, unless every company owning facilities used in receiving interstate energy is to be brought under the Act: and plainly such construction would cut off the exclusion phrase from having any effect whatever, in violation of established rules of construction.

But are the Bristol facilities, because subdivision of energy received over the same is immediate, to be classified

as "facilities used in local distribution", while some of these other facilities, such as transmission lines from points of reception to points of subdivision, are to be classified as "facilities used in transmission which is *not* local"?

What did Congress intend to be covered by the phrase "used in local distribution"?

To find the answer to that question, let us consider the purpose of the Act, and where that phrase came from, and how it happens to be in the Act.

This Court says that the purpose was to provide regulation for that part of the business which the states could not regulate under the Attleboro decision, leaving to the states what they could regulate.

In the Attleboro opinion, distinguishing that case from the *Pennsylvania* case, this Court had said:

> "In the Pennsylvania Gas Co. case, * * * the court said that * * * the thing which the New York Commission had undertaken to regulate, while part of an interstate transmission, was '*local* in its nature', pertaining to the furnishing of gas to *local* consumers, * * * and that such '*local* service' was not of the character which required general and uniform regulation." (273 U. S. 87)

Further, the Court said:

> "The test of the validity of a state regulation is not the character of the general business of the company but whether the particular business regulated is essentially *local* or *national* in character." (273 U. S. 90)

Can there be any question that the Court in that language used the word "local" as opposed to "national", to apply to the business of supplying consumers, such as it dealt with in the Pennsylvania case, in contrast to the business of selling in interstate commerce to distributing companies, such as, in the Attleboro case, it was holding to be "national in character"?

Working to adapt the statute law to this Attleboro decision, the Congress wrote into the Act the phrase "used in

local distribution" to exclude all of the facilities used in distribution in a business local in its nature, as distinguished from national.

All of the facilities of this company, now under discussion, must, accordingly, fall equally within the exclusion, if the term "local" is to be given the same meaning which it plainly had in the opinion of this Court from which Congress took the term.

The Court Below Discarded the Jurisdictional Test Prescribed by Congress.

Congress said the Commission's jurisdiction should be determined by this double test: "Does the company control facilities used (1) in interstate transmission which (2) is not local in character but national?"

The Court below rejected this double test and said the "sole test of jurisdiction" is "whether these facilities 'local' or otherwise are used for the transmission of electric energy from one state to another".

Why was the double test which Congress directed thus disregarded? Because of the inherent difficulty which the Court assumed to be involved in attempting to apply it. The Court ridiculed the idea that there can be any such division of facilities, saying that it necessitates the assumption that "electricity is carried in little abstract buckets" from one state to another. Such a conception the Court called "legal-electric mythology".

The acceptance of the "sole test" announced in the opinion was assumed to be inescapable. The court said the only alternative to such an acceptance

> "* * * is to adopt the argument of the petitioner that a point can be selected in the instantaneous transmission of energy from Massachusetts to Connecticut where interstate transmission ends and intrastate transmission begins." (R. 1175)

Considering a conception of electrical transmission which would permit application of the use-of-facilities test to be mythological in character, the court said:

> "We believe it was to escape this legal-electric mythology that the Federal Power Act made the test of jurisdiction depend, not on the current definition of 'interstate commerce' but on the actual transmission of electric energy from one state to another without regard to the mechanical means of that transmission. This language gives us no excuse for indulging in the bucket theory of electric transmission or for differentiating between the different kinds of equipment over which the energy flows in its instantaneous passage from a generator in one state to a consumer in another." (R. 1176)

Evidently, in the conception of the Court below, transmission from the generator, all the way to the consumer, is an "instantaneous transmission in interstate commerce" subjecting to the Act the distributing company doing the "local" business, as well as the company doing the wholesale "national" business, as the Court said, "without regard to the mechanical means of that transmission".

That is the construction by the Court below upon which this judgment rests.

Can the judgment stand in face of the fact that Congress made ownership of facilities, as this Court said in the Jersey Central case, "the determinative fact" as to jurisdiction. Are not "facilities" the mechanical means of transmission?

There is No Difficulty to a Willing Mind in Understanding and Applying the Congressional Test.

The Court below failed to apply the statutory test because of a supposed difficulty in discovering a point, in the course of transmission, at which facilities cease to be used in the national business, and from which they are used only in the local business.

This supposition manifestly attributes to Congress an impotence which this Court never attributed to it. The question is not where does this instantaneous transmission cease to be within the reach of Congress, but how far, in its course, did Congress choose to regulate that transmission. Congress may stop where it will. If it chose to stop at the point of delivery to the distributing company, that is where the commission's jurisdiction ends.

There is no difficulty, to a willing mind, in understanding where Congress intended to stop, if we remember, what this Court, in the Jersey Central case, said the purpose of Congress was,—which was to regulate wholesale interstate transactions of transmission and sale, held in the Attleboro case to be beyond state reach, but not to regulate matters of transmission or sale which the states could reach. We know from the opinion of this Court that that is what Congress wanted to do.

We have seen that the phrase "in local distribution" was a direct adaptation from the Attleboro opinion. The Congress worked with the opinions of this Court before it.

In the *East Ohio Gas Company case* (283 U. S. 465) this Court said that when gas is brought into a state at high pressure, and the pressure is let down for distribution to consumers, what takes place thereafter is intrastate commerce. Judge Parker, citing that case, in the *South Carolina Power Company case* (52 Fed. 2nd 515) had applied that principle to the importation and distribution of electric energy; and this Court had refused certiorari.

These were recent decisions, fresh in the mind of Congress when this Act was passed. Guided by them, Congress thought that electric energy, brought into a state in interstate commerce, might, upon arrival be distributed in intrastate commerce. Congress did not intend to grant the Federal Commission jurisdiction over such distribution, so in subsection (b) it excluded facilities used in "transmission in intrastate commerce".

Also this Court in the *Pennsylvania Gas Company case*

(252 U. S. 23), had held that the sale to consumers of gas produced in another state, by reason of the local character of the transaction, might be regulated by the state where sold: and in the Attleboro case, this Court indicated that the principle of the Pennsylvania case applied to the electric business. The Congress did not intend to interfere with state regulation of local sales, so it provided that facilities "used in local distribution" should not be subject to Commission jurisdiction.

Here the phrase, "used in local distribution" may have a wider application than "transmission in intrastate commerce", because it may cover transmission to local consumers across state lines.

To accomplish its purpose to regulate only interstate wholesale transactions, Congress in the concluding phrases of sub-section (b) excluded from Commission jurisdiction facilities if owned

(1) by one who transmits only for his own consumption, or

(2) only in intrastate commerce, or

(3) only in his own sales to consumers, though delivery may cross a state boundary.

The only other facilities, over which the Commission *can* have jurisdiction, under the Act, are facilities used by a company to transmit energy for sale at wholesale in interstate commerce. These facilities are not so used. Could the purpose of Congress to exclude them possibly have been made more plain?

In the *Morgan case* (307 U. S. 291), this Court admonished regulatory agencies and Courts of review that, in the administration of a rate regulatory statute, they should so coordinate their actions, and "words should be so construed" as to attain the end aimed at in the statute.

With the utmost deference to the Commission and to the Court of Appeals we express belief that the rule applies in

a case like this; and that in such a case the attempt should be to attain the evident end aimed at by Congress, rather than to discover an adroit way of escape from doing so. We feel that the admonition of this Court has not been observed.

The Court Below Did Not Heed the Construction Given to Sub-Section (a) in the Jersey Central Case.

It is plain that the Court below gave little heed to the opinion of this Court, construing this very Act, in the Jersey Central case. That opinion makes clear the exclusion of these facilities from the Commission's jurisdiction. In that case it was claimed (by the company but not by our Association) that the limitation in sub-section (a),—"which are not subject to regulation by the states",—operates to exclude from Commission regulation all transactions which might be regulated by state power. Negativing that claim, this Court said:

> "The sounder conclusion, it seems to us, is that this limitation, is directed at generation, transmission and *sales*, rather than the corporate arrangements of the utilities engaged in such production and distribution." (319 U. S. 74)

From this construction of this limitation we know that it is directed at the very matters which we are here discussing,—*matters of transmission.*

Certainly, the transmission here discussed is not subject to the Act if Congress intended otherwise. This limitation was designed to have application to transmission. This transmission is in a "local business", such as this Court holds a state may regulate. And the intent of Congress to exclude these facilities from Federal regulation was made plain by an apt phrase, adapted from the very *Attleboro opinion*, which led to the enactment of this statute.

If the exclusion phrase is ever to be given application in any case must it not apply here? Can it be held that this

transmission, and these facilities, would be beyond the reach of state power, if there were no Federal Power Act? If the New Jersey Commission, today, acting within the ambit of statutory authority, finding transmission to be defective, should order changes in these facilities, for the improvement of service to consumers, would its order be held to be beyond state power? Unless the Court would so hold, is not this transmission, and the facilities used therein, marked by the limitation, as outside the Commission's jurisdiction, under the construction already placed upon the limitation, in subsection (a), in the *Jersey Central* opinion?

Under the construction given to subparagraph (a) in that opinion, the exclusion provisions in subparagraph (b) may be given meaning and effect. The construction of the Court below, however, would nullify both those provisions and the limitation in subparagraph (a), and would bring under the Commission's jurisdiction all facilities over which any power from another state is transmitted. We think that construction clearly foreclosed by the *Jersey Central* opinion.

The Court Below Having Rejected the Statutory Test Finally Cast Aside Its Own "Sole Test."

Plainly, this "sole test", announced below, if applied without modification, would bring every company distributing any energy from another state under the Commission's jurisdiction, however restricted the operations of a company, or however insignificant the amount of interstate energy distributed. Few local companies would escape, since few do not distribute *some* interstate energy.

Apparently the Court below recognized that to sweep all these companies, without exception, under the jurisdiction of the Commission would do obvious violence to the undeniable purpose of Congress to limit, to some extent at least, the application of the Act. So the Court below, notwithstanding the "sole test" which it had just announced, proceeded to modify that test,—in fact to substitute another,—by saying:

> "We do not believe Congress intended that a large electric power system which was essentially intrastate in character should come under Federal jurisdiction because of some insignificant or temporary outside connection. But if we keep the purpose of the Act in mind we can avoid unreasonable extensions of Federal jurisdiction. The Court needs only to look at the character of the organization and its facilities in order to determine whether it can reasonably be classified as an interstate system." (R. 1176)

Thus the Court, having thrown away the rule which Congress had prescribed, threw away its own rule also, and substituted what we may call the rule of reason.

Under this substituted rule, whether the Commission has jurisdiction is not to be determined, as Congress said, by the ownership of facilities used in transmission to fill contracts which the Act was designed to regulate, nor is it to be determined by the Court's so-called "sole test", of the ownership of any facilities used in any interstate transmission. Instead of ownership of facilities being determinative, such ownership merely makes the company subject to the Act when the Commission finds that assertion of its jurisdiction will be "reasonable". It is as simple as that!

Thus the Commission is enabled to reach whatever company it will, when it will.

No company can ever escape by appeal, for the finding of a jurisdictional fact by the Commission is conclusive, if based upon evidence fit to be called substantial, the Court below says.

So much for the construction of the Court below. Let me come now to the Commission's construction.

The Commission's Construction of the Act.

Apparently, when it wrote its opinion, the Commission never dreamed that it had any such discretion as the rule of reason would give to it. Seemingly, it considered that it was bound by the statutory provision that it should

have no jurisdiction over a company owning only facilities used solely in local distribution. Its claim of jurisdiction, in its opinion, is based upon a conclusion that the facilities we are now discussing are not "used in local distribution".

To reach that conclusion, the Commission construed the statutory phrase "in local distribution" to embrace only that part of the company's local operation which begins with the process of subdividing energy at low voltage. All the rest is classified as "transmission in interstate commerce, as distinguished from local distribution."

By this device of construction the Commission accomplishes at one fell swoop all that the rule of reason, promulgated by the Court below, would enable the Commission to accomplish piecemeal, since every company receiving energy in volume must have reception facilities.

Judge Frank's Discussion of the "But Clause" in the Hartford Case.

Both the Court below, and the Commission in its brief, point to Judge Frank's discussion in the *Hartford case*, of what he called the "but clause," as sustaining a decision that the concluding phrases of subparagraph (b) are not exclusion phrases at all, but the reverse.

The decision in the *Hartford case* did not depend upon the construction given to the "but clause" by Judge Frank; and the denial of certiorari here certainly implied no approval of that fantastic construction.

The *Hartford case* involved the question whether a generating company, making sales at wholesale in interstate commerce, is subject to the Act. The Commission, so holding, found that the company owned facilities, other than generating facilities, used in making the sale. The Court of Appeals sustained the Commission's order.

If the Act was intended to embrace sales by generating companies, the order of the Commission was properly sustained, regardless of any error of Judge Frank in his construction of the so-called "but clause."

We have demonstrated, I think, in that part of our brief beginning at page 17, that Congress used the language now in that clause for the purpose of limiting the effect of the preceding general grant of jurisdiction.

As the bill was passed by the Senate it read:

> "The provisions * * * shall apply to the transmission of electric energy * * * but shall not apply to the retail sale of such energy in local distribution. The Commission shall have jurisdiction over all facilities for such * * * transmission or sale * * * *except* facilities used only for * * * transmission of electric energy in intrastate commerce or in local distribution." (Sec. 201 S. 2786)

Certainly the purpose of the language, up to that point, was to except from the Commission's jurisdiction facilities used in local distribution or in intrastate commerce.

The House simply brought the first and second sentences of subsection (b) into uniformity of grammatical construction, by adopting the "but" form of exception for both sentences. There is absolutely nothing to indicate that in doing this it intended the "but clause" should have any different effect than when it was begun with the word "except".

It is Demonstrable From Sub-Section 201(c) That the Phrase "Transmission in Interstate Commerce" Was Not Intended by Congress to be Construed in the All-Inclusive Sense Attributed to it Below.

The Commission construed the Act as designed to give it jurisdiction over all facilities used in transmission in interstate commerce, in the broad sense of that term. But that such was not the sense in which the phrase "transmission in interstate commerce" was used by the Congress is demonstratable from the Act itself. The definition in Section 201 (c) reads:

"For the purposes of this part electric energy shall be deemed to be transmitted in interstate commerce if transmitted from a state and *consumed* at any point *outside thereof*."

But it is certain from decisions of this Court that energy passing from a state into another and back into the first state again is transmitted in interstate commerce, within the broad meaning of that term. However, in accordance with its purpose to limit the exercise of Federal power, transmission of that character was excluded from the Act by the definition just read. Such exclusion demonstrates that Congress did not use the phrase "transmission in interstate commerce" in the all-inclusive sense of that term, which was attributed to it below.

The manifest purpose of subsection 201 (c) was not thereby to grant jurisdiction, already granted in subsection 201 (b). It was, rather, to limit the preceding grant, by restricting the scope of the phrase "transmission in interstate commerce", for the purpose of this Act, so that no transmission of electric energy distributed and consumed in the State where generated should be subject to Federal regulation, even though it might pass through another state, on its way from the place of generation to the place of delivery to a distributing company.

SUPREME COURT OF THE UNITED STATES.

No. 189.—October Term, 1944.

The Connecticut Light and Power Company, Petitioner, vs. Federal Power Commission.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

[March 26, 1945.]

Mr. Justice Jackson delivered the opinion of the Court.

The Federal Power Commission has asserted jurisdiction to regulate the accounting practices of the Connecticut Light and Power Company. The Federal Power Act as amended in 1935, 49 Stat. 838, 16 U. S. C. § 792 *et seq.*, declares a congressional policy concerning the business of transmitting and selling electric energy for ultimate distribution to the public, and states that regulation of "that part of such business which consists of the transmission of electric energy in interstate commerce is necessary in the public interest, such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States." § 201(a), 49 Stat. 847, 16 U. S. C. § 824(a).

The Company, incorporated by Connecticut, serving customers only in Connecticut and owning no utilities property outside of that state, is comprehensively regulated by the Connecticut Public Utilities Commission in accounting practices as in many other matters, and it challenges the jurisdiction of the Federal Power Commission.

The State of Connecticut, appearing *amicus curiae*, through its Attorney General avers that this assumption of jurisdiction by the Federal Commission "represents an unwarranted and illegal invasion of the powers of the State to regulate its local distributing company, which powers were clearly to be preserved to the State under the provisions of the Federal Power Act." The Connecticut Public Utilities Commission joins with the National Association of Railroad and Utilities Commissioners also appearing as *amicus curiae*, and they contend that the Federal Power Commission's order regulating accounting practices exceeds any authority given by the Federal Power Act and intrudes upon the field which that Act expressly reserved to local regulation.

The basic facts are not seriously in dispute. The Company for some time prior to August 26, 1935, the effective date of the Federal Power Act, operated as a member of the Connecticut Valley Power Exchange, an interstate power pool which interchanged energy among certain systems in New York, Massachusetts, and Connecticut. Had such operation continued, the Company would be subject to the Act and to the Commission's order. Two days before its effective date and frankly for the purpose of avoiding federal regulation the Company rearranged its operations with intent to cut every connection and discontinue every facility whose continued operation would render it subject to the Federal Power Commission's control. The Commission conceded in its opinion and the Government admits here the Company's right to do so.[1] But the Commission said petitioner's effort was "only a gesture" for while it cut certain connections "it did not cut other interconnections over which interstate energy flowed." Of those facilities which the Commission held subjected the Company to the Power Act at the time it became effective the Company has since divested itself of all but one, and on that one the Commission rests its present jurisdiction to control petitioner's accounting. But it also claims that its accounting orders were entitled to obedience up to the time of the abandonment of the other facilities and because of them.

The facilities on which jurisdiction is predicated are for two general types of operation, one being used in receipt of interstate power, the other for transmission of energy sold to a municipality which in turn sold some part of it for export from the state.

The only presently existing facilities said to confer jurisdiction are at Bristol. Here the petitioning company purchases energy from the Connecticut Power Company, which despite a confusing similarity of name is an entirely separate and unaffiliated concern. The petitioning company receives power at 66,000 volts from the lines of the Connecticut Power Company over a short tap line, owned by the Connecticut Power Company, which leads to petitioner's substation. There the energy is stepped down to 4,600 and 13,800 volts and transmitted thence over many circuits

[1] Cf. Re Twin State Gas & Electric Co., 33 P. U. R. (NS) 39, where the Commission approved a public utility's sale of certain facilities even though the sale might have been "a step in the direction that eventually results in the vendor company obtaining a status other than that of a public utility within the jurisdiction of this Commission."

to consumers in and around Bristol. The substation includes all of the usual equipment, lightning arrestors, disconnects, oil circuit breakers, buses, stepdown transformers, and appurtenant structures of an outdoor substation; and in the substation building a synchronous condenser is owned and operated, as required by the supply contract, to maintain the power factor.

What is called the East Hampton connection, severed July 1, 1939, consisted of facilities by which the petitioner received energy from the Connecticut Power Company at 13,800 volts and transmitted it several miles to its Leesville substation where it was reduced to 4,600 volts and to other substations where it was reduced to 2,300 volts and supplied to customers. What is referred to as the Torrington-Winsted District connection, discontinued in June of 1941, was differently operated. Energy was purchased from the Torrington Electric Light Company, which in turn had purchased it from the Connecticut Power Company. Delivery was accepted by petitioner at the bus bar of the Torrington Company at low voltage, 2,300 volts, petitioner maintained a substation which stepped this voltage up to 27,600, at which it was transmitted about ten miles over its lines to a substation at Winsted where facilities were operated to lower the voltage to 4,600, whence it was put on distribution lines.

The Commission held in all three instances that such facilities of petitioner were "for the transmission of electric energy . . . as distinguished from local distribution thereof." It found that the energy received from the Connecticut Power Company and Torrington Company "regularly, frequently and for substantial periods of time included electric energy in substantial amounts transmitted from Massachusetts." Hence it concluded petitioner owned facilities for transmission of energy in interstate commerce and was a "public utility" under its jurisdiction by virtue of the Act.

The other type of operation on which it predicated jurisdiction was terminated in February 1941. It consisted of sale of energy at wholesale to the Borough of Groton, which operated a municipal distribution plant. The Borough, with knowledge of the Company, resold a portion of this energy to a corporation which transmitted it to Fishers Island, a small island off Connecticut shore but territory of New York. There it was distributed to that small community at retail. When the Groton contract expired

in 1940 petitioner refused to renew it unless the Borough discontinued sales of energy destined for Fishers Island. This change was required by the Company avowedly to eliminate flow of its energy to New York and thus to remove one of the grounds on which the Commission has asserted jurisdiction.

The Commission held that from the effective date of the Act to February 28, 1941, facilities owned by the Company were used to convey electric energy to the Borough of Groton "for the transmission and sale at wholesale of electric energy in interstate commerce" and that such facilities were for transmission of such energy "as distinguished from local distribution thereof." Hence the Company was held to have been a public utility during the period of such operation and subject for that period to the jurisdiction of the Commission.

It is not denied, although the Commission's findings and opinion make no mention of the fact and appear to have given it no weight, that the predominant characteristic of the company's over-all operation is that of a local and intrastate service. It serves one hundred seven towns, cities, and boroughs of Connecticut with a total population of about 660,000 and in addition supplies substantially all the power used by local companies which serve communities of Connecticut having a population of 130,000. It owns no lines crossing the Connecticut boundary and does not connect with any other company at the boundary. It has no business other than Connecticut service for which it needs any facilities whatever, and if local distribution service were terminated, no remaining purpose or use of any kind is suggested for the facilities in question. Its purchases and sales, its receipts and deliveries of power, are all within the state. Its rates and its fiscal and accounting affairs are fully and so far as appears effectively regulated by the State of Connecticut.

The Federal Power Commission on January 7, 1941 issued its order requiring petitioner to show cause why it should not be held to be a "public utility" subject to the Act and why it should not reclassify and keep its accounts according to the Federal Commission's uniform system. On May 15, 1942 it issued findings and decision. Rehearing was denied. The Company then applied for the review by the Court of Appeals of the District of Columbia to which the statute entitles it. § 313(b) of the Act, 49 Stat. 860.

The Court of Appeals sustained the orders. 141 F. 2d 14. It held that "The Federal Power Act obviously intends to confer Federal jurisdiction upon electric distribution systems which normally would operate as interstate businesses." It construed the "but clause" of the Act, which we shall later consider, as "intended to make it clear that this [the Commission's] jurisdiction extends even to local facilities where the Act provides for their regulation, as it does in the case of accounting practices." The Court concluded that "Therefore, whether or not the facilities by which petitioner distributes energy from Massachusetts should be classified as 'local' is not relevant to this case. The sole test of jurisdiction of the Commission over accounts is whether these facilities, 'local' or otherwise, are used for the transmission of electric energy from a point in one state to a point in another." We granted certiorari. — U. S. —.

The first question is whether the reviewing court acted under a misapprehension as to the meaning of the statute.

The jurisdictional and regulatory provisions of the Federal Power Act apply only to "public utilities," and the Act provides that by "public utilities" it "means any person who owns or operates facilities subject to the jurisdiction of the Commission." § 201(e), 49 Stat. 848. These facilities are carefully defined. "The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction, except as specifically provided in this Part and the Part next following, over facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter." § 201(b). Transmission and sale as used in this provision are further defined to mean respectively "transmission of electric energy in interstate commerce" and "sale of electric energy at wholesale in interstate commerce." And the Act goes on to say: "electric energy shall be held to be transmitted in interstate commerce if transmitted from a State and consumed at any point outside thereof" and that sale of electric energy at wholesale means "a sale of electric energy to any person for resale." §§ 201(c), (d). Of course as preamble to all of these provisions stands the policy declaration that Federal regulation "of that part of such business which consists of the transmission of electric energy in interstate commerce and the

sale of such energy at wholesale in interstate commerce is necessary in the public interest, such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States." § 201(a).

Can it be said in that state of the statute that whether facilities are local is not relevant to this case? The Court of Appeals in returning an affirmative answer to this question noted that "There is a superficial inconsistency" between its position and the last quoted provision of the Act. But it said that we, in *Jersey Central Power & Light Co.* v. *Federal Power Commission*, 319 U. S. 61, held this "limitation" "not to apply to the sections of the Act which specifically give the Federal Power Commission jurisdiction over matters of financial arrangements, such as the accounting section which we are discussing here." This misapprehends our holding in the *Jersey Central* case. The line did not cross state borders and since it was wholly within one state, it was contended that the line was used for intrastate transmission and that the Act did not apply although the line was used to transmit power in its course of exportation from the State. We denied this contention and said, "It is impossible for us to conclude that this definition means less than it says and applies only to the energy at the instant it crosses the state line and so only to the facilities which cross the line and only to the company which owns the facilities which cross the line. The purpose of this act was primarily to regulate the rates and charges of the interstate energy. If intervening companies might purchase from producers in the state of production, free of federal control, cost would be fixed prior to the incidence of federal regulation and federal rate control would be substantially impaired, if not rendered futile." 319 U. S. at 71-72. We held that the "primary purpose" of the 1935 amendments to the power Act was to give the Power Commission control of sales of energy across state lines which had been held to be beyond the control of the state of export in *Public Utilities Commission* v. *Attleboro Steam & Electric Co.*, 273 U. S. 83. Here, however, the federal authority to fix the sale price of the energy coming from Massachusetts in interstate commerce attaches and presumably has been or at least may be exercised pursuant to the *Jersey Central* holding before the energy reaches this company. What petitioner does or fails to do is only after the incidence of federal regulation and can in no way frustrate it.

In the *Jersey Central* case on consideration of its facts we said, "We conclude, therefore, that Jersey Central is a public utility under this act." 319 U. S. at 73. Such a finding made the provisions of the Act apply to it. But the Company contended, notwithstanding its status as a public utility, that it was carried out of that particular federal regulation by the fact that the state regulated its security issues. We held that state regulation does not operate to exempt from the security provisions a company otherwise subject to the Commission's jurisdiction but that "The sounder conclusion, it seems to us, is that this limitation is directed at generation, transmission and sale rather than the corporate financial arrangements of the utilities engaged in such production and distribution." *Id.* at 74-75. In other words, the policy admonition is to be heeded in determining whether particular facilities make their owner a "public utility" rather than in exempting from specific regulatory provisions a company found to be a public utility. The *Jersey Central* case does not read the policy declaration out of the Act as the court below assumed it to do.

Legislative history is illuminating as to the congressional purpose in putting these provisions into the Act. As frequently is the case, this original bill was drafted by the counsel and aides of the agency concerned.[2] In its support Commissioner Seavey of the Federal Power Commission said to the House Committee, "The new title II of the act is designed to secure coordination on a regional scale of the Nation's power resources and to fill the gap in the present State regulation of electric utilities. It is conceived entirely as a supplement to, and not as a substitution for State regulation."[3] Progress of the bill through various stages shows constant purpose to protect rather than to supervise authority of the states. In reporting a revised bill to the Senate the Committee on Interstate Commerce said, "Subsection (a) . . . declares the policy of Congress to extend that regulation to those matters which cannot be regulated by the States and to assist the States in the exercise of their regulatory powers, but not to impair or diminish the powers of any State commission."[4] The Report of the House Committee on Interstate and

[2] Hearings, Senate Committee on Interstate Commerce on S. 1725, 74th Cong., 1st Sess., 223.

[3] Hearings on H. R. 5423, House Committee on Interstate and Foreign Commerce, 74th Cong., 1st Sess., 384.

[4] Sen. Rep. No. 621, 74th Cong., 1st Sess.

Foreign Commerce in presenting the amended bill called attention to *Public Service Commission* v. *Attleboro Steam & Electric Co.*, 273 U. S. 83, holding that rates charged in interstate wholesale transactions may not be regulated constitutionally by the states, and expressed the purpose to give federal jurisdiction to regulate rates of wholesale transactions, but not to give jurisdiction over local rates. It said:

"The bill takes no authority from State commissions and contains provisions authorizing the Federal Commission to aid the State commissions in their efforts to ascertain and fix reasonable charges. . . . The new parts are so drawn as to be a complement to and in no sense a usurpation of State regulatory authority and contain throughout directions to the Federal Power Commission to receive and consider the views of State commissions. Probably, no bill in recent years has so recognized the responsibilities of State regulatory commissions as does title II of this bill."

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"Subsection (b) confers jurisdiction upon the Commission over the transmission of electric energy in interstate commerce and the sale of electric energy at wholesale in interstate commerce, but does not apply to any other sale of electric energy or deprive a State of any lawful authority now exercised over the exportation of hydroelectric energy transmitted out of the State. As in the Senate bill no jurisdiction is given over local distribution of electric energy, and the authority of States to fix local rates is not disturbed even in those cases where the energy is brought in from another State."[5]

If we consider the professions of the sponsors of this bill to have been in good faith, where are we to find them written into the Act?

The policy declaration that federal regulation is "to extend only to those matters which are not subject to regulation by the States" is one of great generality. It cannot nullify a clear and specific grant of jurisdiction, even if the particular grant seems inconsistent with the broadly expressed purpose. But such a declaration is relevant and entitled to respect as a guide in resolving any ambiguity or indefiniteness in the specific provisions which purport to carry out its intent. It cannot be wholly ignored.

The declared purpose might also be looked for in specific denials of power to the Commission, such as that found in § 204(f), which provides that its controls, relating to issuance of securities,

[5] H. R. Rep. No. 1318, 74th Cong., 1st Sess., 7, 8, 27.

shall not extend to a public utility operating in a state under the laws of which its securities are regulated by a state commission. But such exemptions from particular regulations apply only to companies found in general to be subject to federal regulation and do not protect the state's general control over its local utilities.

The assurance which the sponsors of this legislation expressed as to protection of the general jurisdiction of a state over electric utilities of this character either is not given effect by this Act at all, or it is to be found in the words of § 201(b), "but shall not have jurisdiction, except as specifically provided in this Part and the Part next following, . . . over facilities used in local distribution . . . ." The court below, following a statement in *Hartford Electric Light Co.* v. *Federal Power Commission*, 131 F. 2d 953 (C. C. A. 2d, 1942), held that this "but" clause "is intended to make it clear that this jurisdiction extends even to local facilities where the Act provides for their regulation, as it does in the case of accounting practices." This seems to get the cart before the horse, for whether the Act provides for such regulation depends on whether the facilities are under the jurisdiction of the Commission; the Commission's jurisdiction does not depend on some independent application of the regulatory provisions. But the cited decision, pointing out that one of the several types of facilities mentioned as exempt in the "but" clause, i. e., those "used *only* for transmission in intrastate commerce," could not possibly be used for interstate transmission, rejected the whole provision to avoid a "foolish interpretation." It concluded, "The 'but' clause then shows up not as one reducing jurisdiction but as a negatively worded confirmation of the Commission's jurisdiction, in certain circumstances, over the facilities mentioned in the 'but' clause."[6] The Commission takes much the same position here.

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[6] The statement was not decisive of the result, which rested on an alternative ground; and the court did recognize need for the further step of finding that the generating facilities were used as facilities for interstate wholesale sales, and therefore were within § 201(b). The court below failed expressly to find existence of jurisdictional facilities under § 201(b). The quoted statement reads in full:

"Moreover, among the facilities described in the 'but' clause of § 201(b), are those used 'only for the transmission . . . in intrastate commerce'; as such facilities could not possibly be among those used for interstate transmission or interstate wholesale sales, the 'but' clause becomes foolish if interpreted as carving out of the authority granted in the earlier part of the

It is hard for us to believe that Congress meant us to read "shall have jurisdiction" where it had carefully written "but shall not have jurisdiction." The command "thou shalt not" is usually rendered as to forbid and we think here it was employed without subtlety or contortion and in its usual sense. If otherwise in doubt this provision should be read in harmony with the policy provision. So read its terms seem plainly to state circumstances under which the Commission shall not have jurisdiction. As such it is the provision which loomed importantly in the minds and speech of its sponsors, perhaps was necessary to get the bill passed, and is one which the Commission must observe and the courts must enforce.

This bill came before Congress as prepared by the staff of the Commission, couched largely in the technical language of the electric art. Federal jurisdiction was to follow the flow of electric energy, an engineering and scientific, rather than a legalistic or governmental test. Technology of the business is such that if any part of a supply of electric energy comes from outside of a state it is, or may be, present in every connected distribution facility. Every facility from generator to the appliance for consumption may thus be called one for transmitting such interstate power. By this test the cord from a light plug to a toaster on the breakfast table is a facility for transmission of interstate energy if any part of the load is generated without the state. It has never been questioned that technologically generation, transmission, distribution and consumption are so fused and interdependent that the whole enterprise is within the reach of the commerce power of Congress, either on the basis that it is, or that it affects, interstate commerce, if at any point it crosses a state line. Such a broad and undivided base for jurisdiction of the Power Commission would be quite unobjectionable and perhaps highly salutary if the United States were a unitary government and the

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same sentence the facilities described in the 'but' clause. Such a foolish interpretation is avoided by giving effect to a pause in the 'but' clause, i. e., 'except as specifically provided in this Part or the Part next following [sections 824-824r of this title].' The 'but' clause then shows up not as one reducing jurisdiction but as a negatively worded confirmation of the Commission's jurisdiction, in certain circumstances, over the facilities mentioned in the 'but' clause. In other words, the 'but' clause is to be construed as if it read: 'Wherever it is so specifically provided in Parts II and III, the Commission shall have jurisdiction over the facilities used for generation, for local distribution, for intrastate transmission, etc.'" Hartford Electric Light Co. v. Federal Power Commission, 131 F. 2d 953, 962.

only conflicting interests to be considered were those of the regulated company.

But state lines and boundaries cut across and subdivide what scientifically or economically viewed may be a single enterprise. Congress is acutely aware of the existence and vitality of these state governments. It sometimes is moved to respect state rights and local institutions even when some degree of efficiency of a federal plan is thereby sacrificed. Congress may think it expedient to avoid clashes between state and federal officials in administering an act such as we have here. Conflicts which lead state officials to stand shoulder to shoulder with private corporations making common cause of resistance to federal authority may be thought to be prejudicial to the ends sought by an act and regulation more likely to be successful, even though more limited, if it has local support. Congress may think complete centralization of control of the electric industry likely to overtax administrative capacity of a federal commission. It may, too, think it wise to keep the hand of state regulatory bodies in this business, for the "insulated chambers of the states" are still laboratories where many lessons in regulation may be learned by trial and error on a small scale without involving a whole national industry in every experiment.

But whatever reason or combination of reasons led Congress to put the provision in the Act, we think it meant what it said by the words "but shall not have jurisdiction, except as specifically provided in this Part or the Part next following . . . over facilities used in local distribution." Congress by these terms plainly was trying to reconcile the claims of federal and of local authorities and to apportion federal and state jurisdiction over the industry. To define the scope of state controls, Congress employed terms of limitation perhaps less scientific, less precise, less definite than the terms of the grant of federal power. The expression "facilities used for local distribution" is one of relative generality. But as used in this Act it is not a meaningless generality in the light of our history and the structure of our government. We hold the phrase to be a limitation on jurisdiction and a legal standard that must be given effect in this case in addition to the technological transmission test.

Nor do we think the exemption of "facilities used for local distribution" exempts only those which do not carry any trace

of out-of-state energy. Congress has said without qualification that the Commission shall not, unless specifically authorized elsewhere in the Act, have jurisdiction "over facilities used in local distribution." To construe this as meaning that, even if local, facilities come under jurisdiction of the Federal Commission because power from out of state, however trifling, comes into the system, would nullify the exemption and as a practical matter would transfer to federal jurisdiction the regulation of many local companies that we think Congress intended to leave in state control. It does not seem important whether out-of-state energy gets into local distribution facilities. They may carry no energy except extra-state energy and still be exempt under the Act. The test is whether they are local distribution facilities. There is no specific provision for federal jurisdiction over accounting except as to "public utilities." The order must stand or fall on whether this company owned facilities that were used in transmission of interstate power and which were not facilities used in local distribution.

Since the Court of Appeals considered irrelevant the jurisdictional test which we find to be imposed by Congress, the inquiry on review has not proceeded under a correct rule of law and it follows that the judgment of the Court of Appeals must be reversed.

Whether the Commission's decision was reached under the same misapprehension of the law of its jurisdiction is not made so clear from its findings or opinion. Of course under the Act "The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive." § 313(b). The Commission has found that each of the facilities in question is "used for the transmission of electric energy purchased as aforesaid from the Connecticut Power Company, as distinguished from local distribution thereof." It has not, however, made an explicit finding that these facilities are not used in local distribution and we are in doubt whether by application of the statute as herein construed it could have done so. We have said, and it is applicable to this case, that "Where a federal agency is authorized to invoke an overriding federal power except in certain prescribed situations and then to leave the problem to traditional state control, the existence of federal authority to act should appear affirmatively and not rest on inference alone." *Yonkers* v. *United States*, 320

U. S. 685, 692; *Florida* v. *United States*, 282 U. S. 194, 211-12; cf. *Palmer* v. *Massachusetts*, 308 U. S. 79, 84; *Federal Trade Commission* v. *Bunte Bros.*, 312 U. S. 349, 351. Nothing except explicit findings excluding the grounds of state control gives assurance that the bounds of federal jurisdiction have been accurately understood and fully respected, and that state power has been considerately and deliberately overlapped.

The findings and opinion of the Commission leave us in doubt, to say the least, as to whether what we consider limitations on the jurisdiction of the Commission were so considered by it. The only specific reference to the subject is the statement that "Respondent's contentions that it is subject to regulation by the Public Utilities Commission of the State of Connecticut and therefore not subject to the regulation provided by the Federal Power Act must be rejected," citing *Northwestern Electric Company* v. *Federal Power Commission*, 125 F. 2d 882, and *In the Matter of The Hartford Electric Light Company*, 2 F. P. C. 502, aff'd, 131 F. 2d 953. In both of those cases factual differences in reference to the status of the company as a public utility were involved, and we agree with the Commission that once a company is properly found to be a "public utility" under the Act the fact that a local commission may also have regulatory power does not preclude exercise of the Commission's functions. Cf. *Northwestern Electric Co.* v. *Federal Power Commission*, 321 U. S. 119. But such a rejection of state control as grounds of exemption must be preceded by the finding, giving due weight to the policy declaration in doubtful cases, that the company in question is a "public utility" by reason of ownership of facilities not used in local distribution.

In determining this the Commission announced and applied a rule which appears to be one of law as to interstate transmission: "Such transmission, in our opinion, extends from the generator, where generation is complete [citing *Utah Power & Light Co.* v. *Pfost*, 286 U. S. 165, 181] to the point where the function of conveyance in bulk over a distance, which is the essential characteristic of 'transmission', is completed and the process of subdividing the energy to serve ultimate consumers, which is the characteristic of 'local distribution', is begun [citing *Southern Gas Corporation* v. *Alabama*, 301 U. S. 148, 155, and *East Ohio Gas Co.* v. *Tax Commission*, 283 U. S. 465, 471]."

The *Southern* and *East Ohio* cases both involved natural gas transportation into a state and sales of gas at retail therein. Each was a tax case in which the state asserted that the sales within the state constituted an intrastate business which in one case would support a state levy of an annual franchise tax based on the actual amount of capital employed in the state; and in the other, an excise tax based on gross receipts from the business within the state. The companies each contended that sales made to consumers within the state were still within interstate commerce and hence there was no state jurisdiction to tax. In neither case was this Court required to determine the exact point at which interstate commerce ceased and intrastate commenced. It was required to find only some "doing of business" within the state in order to sustain the constitutionality of the statutes involved. In both cases it upheld the power of the state to tax and in both held that the distribution at low pressure was a local business for taxation purposes as distinguished from transmission in interstate commerce. But a holding that distributing gas at low pressure to consumers is a local business is not a holding that the process of reducing it from high to low pressure is not also part of such local business. In so far as the Commission found in these cases a rule of law which excluded from the business of local distribution, the process of reducing energy from high to low voltage in subdividing it to serve ultimate consumers, the Commission has misread the decisions of this Court. No such rule of law has been laid down.

But for such an erroneous view of the law established by our decisions it seems doubtful if the Commission would have reached the conclusion that it did upon this record. Nor is it clear that if it were reached it would be supported by substantial evidence. Expert testimony received by the Commission on the subject from the Commission's own experts seems to have been predicated upon the Commission's understanding of the law. It is not for us to make an original appraisal of the facts. We do not therefore undertake to decide as an original matter whether the facilities in question are or are not facilities which can subject the Company to the act.

Nor do we undertake to pass upon the contention of the Government that even if the present facilities do not constitute a sufficient basis for federal jurisdiction the operation of other

facilities since abandoned subjects the company to the accounting order of the Commission for the period of January 1, 1937, when it became effective, until June 1, 1941 or some other date, depending on the facility found to be the basis of jurisdiction. The Company contends that to make it install an expensive system of accounting for a period that was short and has already expired would be a mere waste of time and money and would be of no practical benefit. The Commission contends that the accounting requirements and information would tend to discourage further write-ups and inflation of accounts and would amount to "regulation by the informatory process." It contends that this company has been guilty of accounting abuses in the nature of write-ups and the creation of fictitious surpluses which would be eliminated or at least discouraged by an application of its uniform system of accounts. The Company denies that such abuses exist. It is not, however, contended that Congress has conferred any jurisdiction upon the Commission to reach accounting abuses when and if they exist except as to companies which own facilities subject to the jurisdiction of the Commission. In other companies the correction of these abuses, if they exist, is left to the state government, which has this company completely within its power and whose constituents are the sufferers by any abuses that may exist. We will not undertake to make an original finding as to jurisdiction for a period, any more than as to jurisdiction at the present time.

Another contention made by the Company may be shortly disposed of. It is contended that the volume of energy passing over certain of these facilities is insignificant in proportion to the total. Only about one-fifth of one per cent of all the energy received and generated by the Company throughout the State of Connecticut was transmitted out of the state during the time of the connection of Fishers Island with the Borough of Groton. Congress appears to have left to the Commission's sound administrative discretion to determine whether or not to assert its authority in such situations. Congress annually receives a report of the Commission's work and appropriates the funds for its continuance. If it thinks the Commission is over-extending its attention to trivial situations it has ready means of control in its hands. The wisdom of its work is not our concern, but only its legal justification. We do not find that Congress has conditioned

the jurisdiction of the Commission upon any particular volume or proportion of interstate energy involved, and we do not think it would be appropriate to supply such a jurisdictional limitation by construction.

For the reasons stated, the judgment of the Court of Appeals is reversed with instructions to remand the cause to the Federal Power Commission for further proceedings consistent with this opinion.

Reversed.

Mr. Justice RUTLEDGE concurs in the result.

Mr. Justice MURPHY, dissenting.

The findings and opinion of the Federal Power Commission in this case make clear that they are substantially and reasonably rooted in fact and law and that proper respect has been shown for jurisdictional limitations. Remand of the case to the Commission for further consideration thus can only serve to produce needless delay and to force the Commission to make certain minor and unnecessary changes in its written opinion. Cf. dissenting opinion in *Securities and Exchange Commission* v. *Chenery Corp.*, 318 U. S. 80, 95.

The basic jurisdictional fact necessary to sustain the imposition on petitioner of the Commission's accounting standards is that petitioner be a public utility within the meaning of the Federal Power Act. In the setting of this case petitioner must thus be found to own or operate facilities for the "transmission of electric energy in interstate commerce." § 201(b). Nowhere in the Act has Congress defined "transmission" or "facilities" other than to say in § 201(c) that "electric energy shall be held to be transmitted in interstate commerce if transmitted from a State and consumed at any point outside thereof." The Commission therefore has the duty in the first instance of interpreting and applying these terms to the factual situation confronting it. A court's function in reviewing this jurisdictional determination is necessarily limited to ascertaining whether that determination has warrant in the record and a reasonable basis in law, giving due weight to the fact that the Commission is an expert body designated by Congress and specially equipped to grapple with the

highly technical problems arising in this field. *National Labor Relations Board* v. *Hearst Publications*, 322 U. S. 111, 130, 131.

The Commission here has found that petitioner owns and operates an electric utility system in the state of Connecticut. It is undisputed that electric energy generated in Massachusetts is transmitted over the wires of other companies to petitioner's facilities at Bristol, Connecticut. In order to transmit power economically for such a long distance, it is necessary to raise the voltage and reduce the current in Massachusetts as the energy starts its interstate journey. But the high voltage needed for transit purposes cannot be utilized by consumers. It therefore is necessary to employ apparatus at the receiving end of the interstate transmission to lower the voltage. Petitioner accordingly maintains step-down transformers and substation facilities at Bristol for that purpose. After the voltage is lowered, the energy is subdivided and distributed over petitioner's wires to consumers in and around Bristol.

The Commission concluded that the functions of the Bristol step-down transformers and substation facilities constitute transmission of energy in interstate commerce since it felt that, in its opinion, such transmission "extends from the generator, where generation is complete, to the point where the function of conveyance in bulk over a distance, which is the essential characteristic of 'transmission', is completed and the process of subdividing the energy to serve ultimate consumers, which is the characteristic of 'local distribution,' is begun." In other words, the Commission viewed the interstate transmission as complete only after the energy is converted back into a form suitable for local distribution and use and the facilities used for such conversion purposes are necessarily facilities for interstate transmission.

The jurisdictional determination of the Commission must therefore stand or fall upon the validity of its analysis of when long-distance transmission of electrical energy across state lines is at an end. Only if we can point to an absence of any substantial evidence to support the Commission's view or if we can find legal or statutory principles compelling the opposite view can we justifiably say that the Commission had no jurisdiction in this case or that remand should be made to the Commission for further proceedings. But the Commission's view cannot be undermined on either basis and it should therefore be affirmed.

Certainly there is ample testimony in this case by engineers to the effect that the Bristol substation equipment constitutes "facilities for transmission of electric energy in interstate commerce," as distinguished from "facilities used in local distribution." And the very fact that the Commission, with all its accumulated wisdom and experience, is of the opinion that interstate transmission ceases only after the transmitted energy has been converted into a form suitable for local distribution and use is not without weight and significance.

From a legal standpoint, the Commission made no plain error. Clearly no opinion in this Court has purported to decide at what precise point interstate transmission of electrical energy ends and local distribution commences. This seems to be a novel point insofar as legal precedent is concerned. The Commission's conclusion in this respect hardly seems so unreasonable and unsound as to require us to hold, as a matter of law, that interstate transmission ends just before the voltage is decreased. And this Court does not pretend so to hold in this case.

The Court criticizes the Commission and remands the case to it, however, mainly because it cited *Southern Gas Corp.* v. *Alabama*, 301 U. S. 148, 155, and *East Ohio Gas Co.* v. *Tax Commission*, 283 U. S. 465, 471, in a footnote in support of its proposition that interstate transmission ends only after the energy is converted back into a form suitable for local distribution. It is said that the Commission erroneously assumed that those cases set forth a rule of law which excluded the process of reducing energy from high to low voltage in subdividing it to serve ultimate consumers from the business of local distribution. But even assuming that these two cases do not enunciate such a rule and do not directly support the Commission's proposition, it does not follow that the Commission committed reversible error by citing them in a footnote. The Commission's proposition was grounded not on these two cases but upon the testimony in the record and its own knowledge and experience pertaining to electrical transmission. This is plainly revealed by the use of the phrase "in our opinion" in the sentence setting forth the Commission's distinction between interstate transmission and local distribution. The slight reference to the *Southern Gas* and *East Ohio* cases was at most for purposes of analogy and cannot serve to impair the true underlying basis of the Commission's proposition. Presumably all the Commission need do on remand in this respect is to remove the foot-

note reference to these cases—a fact that makes obvious the proposition that more than an irrelevant or even erroneous citation of a case should be required before we are justified in reversing an administrative determination and sending it back for further consideration.

The Court also deals at great length with the policy declaration in § 201(a) of the Act that federal regulation is "to extend only to those matters which are not subject to regulation by the States" and with the "but" clause in § 201(b), which states that the Commission shall not have jurisdiction, except as specially provided, over certain facilities, including those used in local distribution. But neither of these provisions is controlling in this case where the Commission has made a clear and supportable finding that petitioner is a public utility within the meaning of the Act and where the only federal regulation sought to be imposed is the accounting requirements of § 301(a).

It may be conceded that this Court in *Jersey Central Co.* v. *Federal Power Commission*, 319 U. S. 61, did not read out of the Act the policy declaration in § 201(a). But it did make clear that the declaration, which speaks solely in terms of "regulation," was directed solely at proposed federal regulation of the generation, transmission and sale of electric energy rather than at proposed federal regulation of the corporate financial arrangements of utilities, such as their accounting methods. 319 U. S. at 74, 75. Congress did not intend, in other words, to intrude upon state regulation of generation, transmission and sale of energy but it did intend to impose financial regulations on public utilities engaged in interstate transmission of energy even though states might also impose financial regulations. This means, under the facts of this case, that interstate transmission of energy is a proper test of whether federal accounting standards may be imposed. What sort of transmission may be a proper subject of federal regulation in and of itself if the State of Connecticut already regulates the transmission facilities is not in issue. The Commission clearly did not misconceive the meaning of this policy declaration and, in light of this Court's opinion, it apparently need do no more than spell out its recognition of the scope and present inapplicability of the declaration.

Nor did the Commission do violence to the "but" clause of § 201(b). Here the Commission, following the rule stated in the *Jersey Central* case, 319 U. S. at 73, that "the determinative fact

is the ownership of facilities used in transmission," has found that petitioner is a public utility since it owns and operates facilities used in interstate transmission of energy. The Commission thus has jurisdiction over petitioner for accounting purposes. The denial of jurisdiction in the "but" clause where facilities are used for transmission of energy in local commerce has no relevance in this case, an obvious fact which the Commission apparently now must make explicit on remand.

The Commission is dealing here with a difficult marginal case. The precise dividing line between interstate transmission and local distribution can only be drawn by those familiar with the engineering and electrical problems involved. The problem in this case, moreover, is a relatively unique one. An informal survey by the Commission has shown that out of a total of about 1,000 privately-owned electric utilities there are only 12 which own or operate step-down substation facilities for taking out-of-state energy and which would not otherwise be public utilities under the Act. The problem is thus one peculiarly within the competence of the Commission, which has shown no desire to use the principle it has enunciated in this case and could not use it as a vehicle for assuming unjustified jurisdiction over the facilities of all the local distributing companies in the nation. It has given proper respect to the dictates of Congress relative to state regulation. We should therefore affirm its action in this case without burdening it with requirements of artistic refinement and of negations of the applicability of irrelevant statutory provisions.

Mr. Justice BLACK and Mr. Justice REED join in this dissent.